

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 7, 2004

By unanimous consent, Council reconvened from Closed Session and recessed at 10:42 a.m. and reconvened at 1:36 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager.

Absent: Council Members: Gonzales. (Excused)

INVOCATION (DISTRICT 8)

Rodney Nelson, Pastor, East Valley Pentecostal Church delivered a prayer.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Council Member Yeager, and unanimously carried, the Order of the Day and the Amended Agenda were approved. (10-0-1). Absent: Gonzales.

CEREMONIAL ITEMS

1.1 Appointment and swearing in of District 8 Youth Commissioner. (Mayor)

Action: This item was deferred to September 21, 2004, to be heard in the evening.

1.2 Presentation of a commendation to Stewart Slater for his high level of performance and firm commitment to the American Musical Theatre of San José, and for his dedicated leadership in serving the constituents of San José and the City's unique arts culture. (Williams) (Rules Committee referral 9/1/04)

Action: Vice Mayor Dando and Council Member Williams presented a commendation to Stewart Slater for his commitment to the American Musical Theatre of San José.

CONSENT CALENDAR

Upon motion by Council Member Chavez, seconded by Council Member Yeager and unanimously carried, the Consent Calendar was approved. (10-0-1). Absent: Gonzales.

2.1 Approval of Minutes.

(a) Regular meeting of August 3, 2004

Documents Filed: The regular minutes of August 3, 2004.

Action: The Minutes were approved.

2.2 Final adoption of ordinances:

(a) ORD. NO. 27235 – Repeals Section 11.24.430 of Chapter 11.24 of Title 11 of the San José Municipal Code to eliminate the designation of Southwest Expressway from south to north between Stokes Street and Bascom Avenue as a one-way street.

Documents Filed: Proof of publication of title of Ordinance No. 27235 executed on August 31, 2004, submitted by the City Clerk.

Action: Ordinance No. 27235 was adopted. (10-0-1). Absent: Gonzales.

2.3 Approval of a fourth amendment to the office lease with RNM First Street Center, LP, for the Airport administrative offices located at 1732 N. First Street, to provide for overnight parking of up to thirty (30) additional City and City Contractor fleet vehicles, for additional rent paid by the City in an annual amount not to exceed \$56,000, commencing on July 1, 2004, and subject to an annual increase in the amount of 2% through the expiration of the office lease on December 31, 2009. CEQA: Resolution Nos. 67380 and 71451, PP 04-07-222. (Airport)

Documents Filed: Memorandum from Aviation Director Ralph G. Tonseth, dated August 18, 2004, recommending approval of the amendment.

Action: The fourth amendment was approved. (10-0-1). Absent: Gonzales.

2.4 Adoption of a resolution to:

(a) Create the following job classification:

(1) Building Inspection Manager (3910);

(b) Change the job classification titles of:

(1) Child Care & Youth Services Coordinator (6104) to Community Programs Administrator (6104);

(2) Parking Control Officer (2451) to Parking & Traffic Control Officer (2451);

(3) Sr. Parking Control Officer (2453) to Sr. Parking & Traffic Control Officer (2453); and

(4) Parking Control Supervisor (2455) to Parking & Traffic Control Supervisor (2455);

2.4 Adoption of a resolution to: (Cont'd.)

(c) Delete various job classifications as shown below:

- (1) Sr. Computer Operator (1335);**
- (2) Community Garden Coordinator (3417);**
- (3) Sr. Communications Services Operator (1178);**
- (4) Database Administrator (8125);**
- (5) Guest Services Administrator (6331); and**
- (6) Principal Development Officer (4228).**

CEQA: Not a Project. (Employee Services)

Documents Filed: Memorandum from Director of Employee Services Mark Danaj, dated August 18, 2004, recommending adoption of the resolution.

Action: Resolution No. 72298, entitled: "A Resolution of the Council of the City of San José Approving Amendments to the City of San José Pay Plan for Various Classifications", was adopted. (10-0-1). Absent: Gonzales.

2.5 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Larry Kirkland to fabricate and install an artwork at the new Evergreen Branch Library, in an amount not to exceed \$135,562. CEQA: Mitigated Negative Declaration, H03-056. Council District 8. (Office of Cultural Affairs)

Documents Filed: Memorandum from Deputy Director of Cultural Affairs, Jerry Allen, dated August 18, 2004, recommending adoption of the resolution.

Action: Resolution No. 72299, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Larry Kirkland to Fabricate and Install a Public Artwork at the New Evergreen Branch Library in an Amount Not to Exceed \$135,562", was adopted. (10-0-1). Absent: Gonzales.

2.6 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the General Fund for Fiscal Year 2004-05 as follows:

- (a) Establish an appropriation in the City-wide expenses to the City Manager's Office for the Pre-Disaster Mitigation Grant Program in the amount of \$25,000; and**
 - (b) Increase the earned revenue estimate from the State of California by \$25,000.**
- CEQA: Not a Project. (Emergency Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Emergency Services Frances Edwards and Budget Director, Larry D. Lisenbee, dated August 18, 2004, recommending the adoption of the amendments.

Action: Ordinance No. 27246, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the General Fund for the Pre-Disaster Mitigation Grant Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 72300, entitled: "A Resolution of the

2.6 (Cont'd.)

Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the General Fund”, were adopted. (10-0-1). Absent: Gonzales.

2.7 Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2004-2005 #3 and authorization for the Director of General Services to execute the purchase orders.

CEQA: Not a Project. (General Services)

Action: This item was dropped. See September 14, 2004 Council agenda, Item 2.4.

2.8 Adoption of a resolution initiating proceedings and setting September 21, 2004 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Cambrian No. 33, which involves the annexation to the City of San José of 0.44 acre of land, located on the north side of Curtner Avenue, opposite the terminus of Joseph Avenue and adjacent to the City of San José annexations Cambrian Nos. 30A and 31, and the detachment of the same from West Valley Sanitation, County Lighting County Service, Central Fire Protection, and Area No 01 (Library Services) County Service. CEQA: Resolution No. 65459, C03-092. Council District 9. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated August 18, 2004, recommending adoption of the resolution.

Action: Resolution No. 72301, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designed as Cambrian No. 23 and Described Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (10-0-1). Absent: Gonzales.

2.9 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the General Fund for Fiscal Year 2004-05 as follows:

(a) Increase the existing appropriation in City-wide expenses to the Police Department for the Fiscal Year 2004-05 Alcohol Beverage Control Grant in the amount of \$75,000; and

(b) Increase the earned revenue estimate from the State of California by \$75,000.

CEQA: Not a Project. (Police/City Manager’s Office)

Documents Filed: Memorandum from Chief of Police Robert L. Davis and Budget Director, Larry D. Lisenbee, dated August 18, 2004, recommending adoption of the amendments.

2.9 (Cont'd.)

Action: Ordinance No. 27242, entitled; “An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the General Fund for the 2004-2005 Alcohol Beverage Control Grant; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72302, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the General Fund”, were adopted. (10-0-1). Absent: Gonzales.

2.10 Approval of an agreement with the San José Water Company for installation of water facilities to serve the new Rose Garden Branch Library Project, for the period September 7, 2004 to September 30, 2005, in the amount of \$118,329. CEQA: Negative Declaration, PP H02-065. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated August 18, 2004, recommending approval of the agreement.

Action: The agreement was approved. (10-0-1). Absent: Gonzales.

2.11 Acceptance of the Second Quarter 2004 San José Arena Authority Ticket Distribution Program Report. CEQA: Not a Project. (San José Arena Authority)

Documents Filed: Memorandum from Executive Director of San Jose Authority Chris Morrissey, dated August 18, 2004, recommending the acceptance of the report.

Action: The Report was accepted. (10-0-1). Absent: Gonzales.

2.12 Acceptance of the Office of the City Auditor's:

- (a) Report of Activities and Findings for the Period June 16 through August 15, 2004.**
- (b) Report on Sales and Business Tax Audit Results for the Quarter Ended June 30, 2004.**

(City Auditor)

(Rules Committee referral 9/1/04)

Documents Filed: (1) Report of Activities and Findings for the period of June 16 through August 15, 2004 from the Office of the City Auditor. (2) Sales and Business Tax Audit Results for the Quarter Ended June 30, 2004 from the Office of the City Auditor.

Action: The reports were accepted. (10-0-1). Absent: Gonzales.

2.13 Approval of the City Auditor Gerald Silva's travel calendar through December 31, 2004, at a total cost to the City of \$422. (City Auditor) (Rules Committee referral 9/1/04)

Documents Filed: Letter from City Auditor, Gerald Silva, dated August 24, 2004, requesting approval of his travel calendar.

2.13 (Cont'd.)

Action: The City Auditor's travel calendar was approved. (10-0-1). Absent: Gonzales.

**2.14 Adoption of a resolution accepting invitations for the opening performance of the Opera San José from Opera San José and approving the distribution of invitations to officials and staff of the City and the Redevelopment Agency in their official capacity as representatives of the City of San José. (City Attorney)
(Rules Committee referral 9/1/04)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 2, 2004, recommending adoption of the resolution.

Action: Resolution No. 72303, entitled: "A Resolution of the Council of the City of San José Accepting Invitations From Opera San José to Its Opening Performance and Approving the Distribution of Invitations to Officials and Staff of the City of San José and the San José Redevelopment Agency in Their Official Capacity as Representatives of the City of San José", was adopted. (10-0-1). Absent: Gonzales.

- 2.15 (a) Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the Meadowfair Park Phase II Project (PSM 375), the King and Story Road Improvements Project (PSM 221#4), the Transit Mall Lighting Project (PSM 379), the Traffic Signal at King/Wilshire (PSM 380), and the Richmond-Menker Housing Rehabilitation Improvements Phase I Project (PSM 377), with a net impact to the fund of \$443,000.**
- (b) Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Traffic Signal at King/Wilshire Project as more specifically described in the memorandum from the Redevelopment Agency dated June 17, 2004.**

**CEQA: Not a Project. Council Districts 5, 6, and 8. SNI: Burbank/Del Monte, West Evergreen, Gateway East. (City Manager's Office)
(Rules Committee referral 9/1/04)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated August 25, 2004, recommending adoption of the ordinances and resolutions.

Action: Ordinance No. 27243, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for the Meadowfair Park Phase II Project, the King and Story Road Improvements Project, the Transit Mall Lighting Project, the Traffic Signal at King/Wilshire and the Richmond-Menker Housing Rehabilitation Improvements Phase I Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", Resolution No. 72304, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment

2.15 (Cont'd)

Capital Projects Fund”, and Resolution No. 72305, entitled: “A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Gateway East Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area”, was adopted. (10-0-1). Absent: Gonzales.

2.16 Adoption of a resolution authorizing the City Manager to augment the grant application amount authorized under Resolution 72278, increasing the total grant amount for the FY 2004-2005 Metropolitan Medical Response System (“MMRS”) Program Continuation Grant with the United States Department of Homeland Security by an additional \$50,000, bringing the total to \$450,000. (Emergency Services) (Rules Committee referral 9/1/04)

Documents Filed: Memorandum from City Manager Del D. Borgsdorf, dated September 3, 2004, recommending the adoption of the resolution.

Action: Resolution No. 72306, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Increase the Total Grant Amount for the FY 2004-2005 Metropolitan Medical Response System Program Continuation Grant with the United States Department of Homeland Security by \$50,000 for a Total Grant Amount Not to Exceed \$450,000”, was adopted. (10-0-1). Absent: Gonzales.

STRATEGIC SUPPORT SERVICES

3.1 Report of the Study Session Mayor Gonzales, Chair

Documents Filed: May 2004 Proposed Operating and Capital Budget Study Session report.

- (a) May 2004 Proposed Operating and Capital Budget Study Sessions

Action: This item was deferred to September 14, 2004.

3.2 Report of the Rules Committee – Meeting of August 25, 2004 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee report of August 25, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review September 7, 2004 Draft Agenda

3.2 (Cont'd.)

The Committee recommended approval of the September 7, 2004 City Council agenda, with the following addition:

- (a) During the evening session, appoint and swear-in the District 8 Youth Commissioner (Mayor)

(2) Add New Items to August 31, 2004 Amended Agenda

The Committee recommended the following addition to the August 24, 2004 City Council agenda:

- Mayor and Council Member Requests
 - a) Present a commendation to Father Kevin Joyce for his years of spiritual and community contributions as Pastor of St. Maria Goretti Church (Gregory)
- City Manager Requests – There were none.
- City Attorney Requests – There were none.
- City Clerk Requests – There were none.

(3) List of Reports Outstanding

The Committee noted and filed the City Manager's report.

(c) Legislative Update

(1) State

The Committee questioned both Director of Intergovernmental Relations Betsy Shotwell and Director of Planning, Building & Code Enforcement Stephen Haase about AB2702 (Steinberg) relating to housing: second units. The Committee directed Ms. Shotwell and Mr. Haase to return next week with clarification and history of the City's position on secondary (granny) units.

(2) Federal – There was no report.

(d) Meeting Schedules – There were none.

(e) The Public Record – The Committee noted and filed the Public Record.

(f) Appointment to Boards, Commissions and Committees – There were none.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Request to place an audit of the McKean Youth Sports Facility on the City Auditor's Workplan. Attachment: Memorandum from City Manager Del D. Borgsdorf, dated August 20, 2004, recommending acceptance of the City Manager's response to correspondence received regarding McKean Road Youth Sports Facility Project.

3.2 (Cont'd.)

The committee accepted the report and directed the Administration to send a formal response to Nancy Pyle.

- (2) Expansion of Small Business Development Commission Functions, Powers and Duties Preliminary Workload Assessment. Attachment: Memorandum from Director of Economic Development, Paul Krutko, dated August 18, 2004, recommending (1) Rules Committee review workload assessment, (2) Refer staff analysis of expansion of Small Business Development Commission duties to the Driving a Strong Economy workplan.

The Committee referred this issue to Council with direction Administration to return in one week with information on how the assignments will impact department and standing committee projects.

(h) Oral communications – None were presented.

(i) Adjournment

The meeting adjourned at 2:45 P.M.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and unanimously carried, the Rules Report and Actions of August 25, 2004 were accepted, with additional direction to the City Attorney to examine any anticipated impacts of the newly adopted pet limits on secondary housing units. (10-0-1). Absent: Gonzales.

Report of the Rules Committee –Meeting of September 1, 2004

Documents Filed: The Rules Committee Report of September 1, 2004.

(c) Legislative Update

(1) State

- (a) AB 1878 (Chan) relating to motor scooters, operation and noise; SB 1694, SB 1695, SB 1694, SB 1697 (Torlakson), relating to driving under the influence. Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated August 26, 2004, recommending the Council's support for AB1879, SB1694, SB1695, SB1696, and SB1697.

The Committee recommended support.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and unanimously carried, the Rules Report and Actions of September 1, 2004 were accepted. (10-0-1). Absent: Gonzales.

3.4 Approval of purchase of citywide insurance policies for the period October 1, 2004 to October 1, 2005, in an amount not to exceed \$2,950,000. Funding for these policies is included in the 2004-2005 Operating Budget. CEQA: Not a Project. (Finance))

Documents Filed: Memorandum from Finance Director Scott P. Johnson, dated September 2, 2004, recommending approval of the purchase.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, the purchase of citywide insurance policies were approved. (10-0-1). Absent: Gonzales.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

**4.2 Report of the Driving a Strong Economy Committee – August 23, 2004
Council Member Williams, Chair**

Documents Filed: The Driving a Strong Economy Committee report of August 23, 2004.

- (a) Economic Indicators and Trends. Attachment: Memorandum from Director of Economic Development, Paul Krutko, dated August 11, 2004, transmitting to Council of a staff presentation.

The Committee accepted the staff's report, "Economic Indicators and Trends".

- (b) Status of Industrial Lands. Attachment: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated August 13, 2004, recommending the acceptance of a report on employment lands.

The Committee accepted the staff's report, "Status of Industrial Lands".

- (c) Report on attracting amateur and professional sports to San José

The Committee accepted staff's report and recommended staff to cross-reference this item at the September 7, 2004 Council meeting.

SEE ITEM 4.5 FOR COUNCIL ACTION TAKEN

- (d) Oral petitions – None.
- (e) Adjournment – Meeting was adjourned at 3:37 P.M.

Action: Upon motion by Council Member Williams, seconded by Council Member Chavez, and unanimously carried, the Driving a Strong Economy Committee Report and Actions of August 23, 2004 were accepted. (10-0-1). Absent: Gonzales.

- 4.3 Reports on bids and award of contract for the Towers Lane Improvement Project (north of Aborn Road) to the low bidder, DeSilva Gates Construction, LP, in the amount of \$626,191, and approval of a 15 percent contingency in the amount of \$94,000. CEQA: Exempt, PP 02-03-046. Council District 7. SNI: West Evergreen. (Public Works/Transportation) (Deferred from 8/31/04 – Item 4.3)**

Action: This item was deferred to September 14, 2004.

- 4.4 Accept the Strong Neighborhood Business Plan, as recommended by the Building Strong Neighborhood Committee. (City Manager's Office) [Building Strong Neighborhoods Committee referral 8/16/04 – Item 4.1(b)]**

Documents Filed: (1) Supplemental memorandum from Deputy City Manager Jim Holgersson, dated September 3, 2004, transmitting an update on Strong Neighborhoods Business Plan Approval.(2) Memorandum from Senior Executive Analyst, Nadine Nader, dated September 2, 2004, transmitting an update to the Strong Neighborhoods Team.

Discussion: Council Member Gregory requested staff to provide Council with additional information about staffing allocations and assignments.

Action: Upon motion by Council Member Chavez, seconded by Council Member Gregory, and unanimously carried, the Business Plan was accepted and additional direction for Staff directed to provide Council with additional information about staffing allocations and assignments. (10-0-1). Absent: Gonzales.

- 4.5 Council discussion on the Report on Attracting Amateur and Professional Sports to San José, as directed by the Driving a Strong Economy Committee. [Driving a Strong Economy Committee referral 8/23/04 – Item 4.2(c)]**

Documents Filed: Memorandum from Senior Executive Analyst, Nadine Nader, dated September 2, 2004, transmitting an update on the Attracting Amateur and Professional Sports to San José issue.

Action: Upon motion by Council Member Williams, seconded by Council Member Cortese, and unanimously carried, the report was accepted. No Council action was taken. (10-0-1). Absent: Gonzales.

6 TRANSPORTATION SERVICES

- 6.2 Public Hearing and adoption of a resolution approving the vacation of a portion of Lenzen Avenue and reserving a public service easement (PSE), located 350 feet east of Stockton Avenue. CEQA: Exempt. Council District 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated August 18, 2004, recommending a public hearing and adoption of a resolution.

6.2 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, The Public Hearing was held and Resolution No. 72307, entitled: "A Resolution of the Council of San José Vacating a Portion of Lenzen Avenue Between Stockton Avenue and the Northeasterly Terminus of Lenzen Avenue, and Reserving a Public Service Easement", was adopted. (10-0-1). Absent: Gonzales.

6.3 **Report on bids and award of contract for the Greater Street Reconstruction – Delmas Avenue Project to the low bidder, Wattis Construction Company, Inc., in the amount of \$416,664, and approval of a contingency in the amount of \$42,000. CEQA: Exempt, PP04-07-215. Council District 3. SNI: Greater Gardner. (Public Works)**

Documents Filed: Supplemental memorandum from Director of Public Works Katy Allen, dated August 31, 2004, providing additional information after bids were opened.

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and unanimously carried, the report on bids and award were approved. (10-0-1). Absent: Gonzales.

6.4 **Adoption of a resolution authorizing the City Manager to file an application for Federal Surface Transportation Program (STP) funding for the FY 05-06 and FY 06-07 STP Street Resurfacing Project and committing the necessary City funding match of \$853,000 for the project and stating the assurance of the City of San José to complete the project, subject to appropriation of funds, in the total amount of \$7,437,000. CEQA: Exempt, PP04-08-233. (Transportation)**

Documents Filed: Memorandum from Director of Transportation, James R. Helmer, dated August 18, 2004, recommending adoption of a resolution.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, Resolution No. 72308, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to File An Application for Federal Surface Transportation Program (STP) Funding for Fiscal Year 2005-2006 and Fiscal Year 2006-2007 STP Street Resurfacing Project, Committing the Necessary City Funding Match of \$853,000 for the Project, and Stating the City's Assurance to Complete the Project, Subject to Appropriation of Funds, in the Total Amount of \$7,437,000", was adopted. (10-0-1). Absent: Gonzales..

ENVIRONMENTAL & UTILITY SERVICES

7.1 **Amend the agreement between the City and Norcal for Recycle Plus Integrated Waste Management Services by incorporating unanticipated additional labor costs, ensuring prevailing wage, and accepting additional services offered by Norcal. (City Manager's Office)**

7.1 (Cont'd.)

Action: This item was deferred to September 14, 2004.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:
None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/Units</u> | <u>Type</u> |
|--------------|--|-----------------------------|-------------------------|-------------------|------------------|
| 9618 | Southwest corner of Oakland Road and Rock Avenue | 4 | Orchard Property LLC | 107 units | Single family |

OPEN FORUM—

- (1) John P. Moore expressed his concerns regarding the New City Hall budget.
- (2) William Garbett criticized the Council for actions relating to high-rise housing and Alum Rock Park.

RECESS/RECONVENE

The City Council recessed at 2:41 p.m. and reconvened at 7.05 p.m. Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory,
LeZotte, Reed, Williams, Yeager.

Absent: Council Members: Gonzales. (Excused)

City Clerk Lee Price, read the requests for continuances of applications and other actions as recommended. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the below noted continuances were granted. (10-0-1).
Absent: Gonzales.

PUBLIC HEARINGS

- 11.2 Public Hearing on and consider approval of an ordinance authorizing the following rezonings located on the west side of North Capitol Avenue, opposite Penitencia Creek Road (905 N. Capital Avenue): 1) Planned Development Rezoning from County to A(PD) Planned Development Zoning District on approximately 5.1 acres, to allow up to 113 single-family attached residences (Lands of Yoneda); 2) Rezoning from Unincorporated County to R-M Multiple Residence District on approximately 4.2 acres (Lands of Yoneda); and 3) Rezoning from Unincorporated County to R-M Multiple Residence District on approximately 1.76 acres (Lands of Chelstowski). (Yoneda Masato and Fusa T. Trustee et al., Owner; Trumark Companies, Chris Davenport, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
PDC 04-017 - District 4**

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated August 18, 2004, recommending approval of the proposed rezoning.

Public Comments: Carrie Hamilton spoke in opposition due to a possible increase in traffic congestion.

Action: Upon motion by Council Member Reed, seconded by Council Member Campos, and unanimously carried, Ordinance No. 27244, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of North Capital Avenue, Opposite Penitencia Creek Road, from Unincorporated County to A(PD) Planned Development Zoning District on 5.1 Acres (Lands of Yoneda); from Unincorporated County to R-M Multi-Family Residence District on 4.2 Acres (Lands of Yoneda); and From Unincorporated County to R-M Multi-Family Residence District on 0.76 Acres (Lands of Chelstowski)", was passed for publication. (10-0-1). Absent: Gonzales.

- 11.3 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the south side of State Street, approximately 300 feet easterly of Pacific Avenue, from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 6 single-family detached residences on a 0.41 gross acre site. (Next Step Homes, LLC, Owner/Developer). CEQA: Mitigated Negative Declaration.
PDC 03-104 - District 4**

Action: This item was continued to September 21, 2004.

- 11.4 Public Hearing on the Appeal of the Planning Commission's decision to approve with conditions a Conditional Use Permit to extend the hours of late night use to 24 hours per day for a public eating establishment located at 394 South Second Street in the DC Downtown Primary Commercial Zoning District. (Renato and Diane Cusimano, Owners: Palermo Ristorante Italiano, Developer). CEQA: Resolution No. 68839. Director of Planning, Building and Code Enforcement recommends to uphold the appeal and adopt a resolution to deny and Planning Commission recommends approval to extend hours of late night use until 5:00 a.m. on Saturday and Sunday with a one-year compliance review (5-0-2).
CP 04-058 (RCP 04-060)- District 3**

Documents Filed: (1) Memorandum from Chief of Police Robert L. Davis, dated August 27, 2004, recommending a reverse of the Planning Commission decision to allow the proposed extended hours for Palermo's Restaurant, and modifying the Conditional Use Permit. (2) Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated August 18, 2004, recommending adoption of a resolution.

Action: This item was dropped.

- 12.1 PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram to allow expansion of the Urban Service Area and a minor modification of the Urban Growth Boundary for property located at the north side of Fleming Avenue (1230 and 1238 Fleming Avenue) between Impresario Way and Warner Drive on a 2-acre site. (Carl & Helen Gunnels Trust, Owners/Mark Thomas & Company, Applicant). The General Plan Land Use/Transportation Diagram designation of Non Urban Hillside is not proposed to change. CEQA: Mitigated Negative Declaration, GP03-05-04. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1; Platten Absent).
GP03-05-04, UGB03-01 - District 5**

Documents Filed: (1) Proof of publication of Notice of Public Hearing, executed on July 30, 2004, submitted by the City Clerk (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated August 18, 2004, recommending adoption of the General Plan amendment. (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP03-05-04 and UGB03-01, dated August 4, 2004, recommending approval of the General Plan amendment.

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and unanimously carried, the Staff/Planning Commission recommendation *to change the Land Use/Transportation Diagram to allow expansion of the Urban Service Area and a minor modification of the Urban Growth Boundar for property located at the north side of Fleming Avenue* was tentatively approved. (10-0-1). Absent: Gonzales.

12.2 PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Light Industrial to Medium High Density Residential (12-25 DU/AC) for property located on the northwest corner of Mabury Road and South King Road on a 3.96-acre site. (Borrelli Investment Company, Owner/Ray Hashimoto, Applicant). CEQA: Mitigated Negative Declaration, GP04-04-03. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval for Transit Corridor Residential (20 + DU/AC) (4-0-2-1; Platten & Campos Absent; Dhillon Abstained). GP04-04-03 - District 4

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated August 18, 2004, recommending approval of the staff proposed alternative . (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP04-04-03, dated August 6, 2004, recommending approval of the General Plan amendment.

Public: Applicant, Ray Hashimoto spoke in support of the proposed general plan amendment.

Dale Warner requested more legal research to be conducted on the proposed project.

Terry Hamilton expressed concerns about the timeline of the proposed project and the effects on the community during the waiting and production period.

Discussion: Council Member Chavez stated she would not be supporting the motion due to the planning department's planning process being incomplete. She stated that the timing is problematic and that the Council should wait until the process is fully complete before approving it.

Action: Upon motion by Council Member Reed, seconded by Council Member Yeager, the motion was carried, and the Applicant's *request to change the Land Use/Transportation Diagram designation from Light Industrial to Medium High Density Residential for property located on the northwest corner of Mabury Road and South King Road on a 3.96 acre site* was tentatively approved. (8-2-1). Noes: Chavez, LeZotte. Absent: Gonzales.

**12.3 PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Estate Residential (1.0 DU/AC) to Very Low Density Residential (2.0 DU/AC) for property located on both sides of Rosemar Court, north of Rosemar Avenue on an 8.5-acre site. (Rosemar Enterprises Corp., Owners/Gerry De Young, Applicant). CEQA: Mitigated Negative Declaration, GP03-05-08. Director of Planning, Building and Code Enforcement recommends approval and Planning Commission recommends denial (4-3-0; Campos, Levy & James Opposed). GP03-05-08 - District 5
(Continued from 3/16/04 - Item 12.3 and 6/1/04 - Item 12.4)**

12.3 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Campos, dated September 7, 2004, recommending support of the Planning staff recommendation to approve the General Plan Amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Estate Residential (1.0 DU/AC) to Very Low Density Residential (2.0 DU/AC) on an 8.5-acre site located on both sides of Rosemar Court, north of Rosemar Avenue. (2) Supplemental memoranda from Secretary of the Planning Commission Stephen Haase, dated May 10 and August 18, 2004, transmitting updated information on the propose issue.

Public: Steve Grennan, Gus Meyner, Robert Mugno, Jeff Jarvella, Glee Jarvella spoke in opposition to the amendment due to increased density and traffic.

Robert Milnes spoke in favor of the project with exception to the danger of the increased traffic on Rosemark Avenue and requested work be done to widen that street.

George Tsukuda spoke on the hazards of the Rosemar Ave.

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and unanimously carried, the Staff recommendation *to approve the General Plan Amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Estate Residential (1.0 DU/AC) to Very Low Density Residential (2.0 DU/AC) on an 8.5-acre site located on both sides of Rosemar Court, north of Rosemar Avenue* was tentatively approved, per memorandum from Council Member Campos, dated September 7, 2004. (10-0-1). Absent: Gonzales.

Items 11.1 and 12.4 were heard concurrently.

- 11.1 Public Hearing on and consider approval of an ordinance on Planned Development Prezoning of the property located at the northwest corner of Story Road and Lyndale Avenue (13785 Story Road), from County to A(PD) Planned Development Zoning District, to allow for commercial uses on a 0.12 gross acre site. (Joseph W Sunzeri 1997 Fam LP, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommends approval and because a quorum was not reached on the motion (3-2-2), Planning Commission forwards no recommendation. SNI: East Valley/680 Communities. PDC 04-022 - District 5**

- 12.4 (a) PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram from Medium Low Density Residential designation (8 DU/AC). CEQA: Mitigated Negative Declaration, GP04-05-02. SNI: East Valley/680 Communities. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2; Platten & Campos Absent). GP04-05-02 - District 5**

- 12.4 (b) PLANNED DEVELOPMENT PREZONING from County to A (PD) Planned Development Zoning District to allow for commercial uses. CEQA: Mitigated Negative Declaration, PDC04-022. SNI: East Valley/680 Communities. Director of Planning, Building and Code Enforcement recommend approval and because a majority was not reached on the motion (3-2-2), Planning Commission forwards no recommendation. PDC04-022 - District 5**

Documents Filed: (1) Proof of publication of Notice of Public Hearing, executed on July 16, 2004, submitted by the City Clerk. (2) Letter from Joan R. Gallo of the Hopkins and Carley Law Corporation, dated September 3, 2004, recommending conditions from the applicants. (3) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated August 18, 2004, recommending approval of the proposed General Plan Amendment. (4) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP04-05-02 and PDC04-022, dated August 5, 2004, recommending approval of the General Plan Amendment and Planned Development Prezoning.

Discussion: Mayor Gonzales opened the Public Hearing. There were no speakers from the floor. The Public Hearing was closed. Council Member Campos requested staff to continue working with the applicant regarding neighborhood traffic safety concerns.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams, and unanimously carried, Ordinance No. 27245, entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated at the Northwest Corner of Story Road and Lyndale Avenue to A (PD) Planned Development Zoning District", was passed for publication; Staff recommendation *request to change the Land Use/Transportation Diagram from Medium Low Density Residential designation and Planned Development Prezoning from County to A (PD) Planned Development Zoning District to allow for commercial uses with the following considerations: (1) Adopt the parking plan/design proposed by the applicant, and (2) Require only those improvements along Story Road that would create a safe walkway with the improvements to be made within a reasonable time frame,* were tentatively approved per Council Member Campos' memorandum, dated September 7, 2004 with additional direction for Staff to continue working with the applicant regarding neighborhood traffic safety concerns. (10-0-1). Absent: Gonzales.

- 12.5 PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) for property located on the west side of Peregrino Way (1726 Peregrino Way), approximately 400 feet northwest of Dry Creek Road on a 1.16-acre site. (Kennedy Rogers, Owner/Applicant). CEQA: Mitigated Negative Declaration, GP04-06-01. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). GP04-06-01 - District 6
(Continued from 6/1/04 - Item 12.5 and 6/15/04 - Item 12.3)**

12.5 (Cont'd.)

Documents Filed: (1) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated August 18, 2004, recommending adoption of the proposed General Plan amendment to Low Density Residential (5 DU/AC). (2) Department of Planning, Building, and Code Enforcement General Plan Report on Project File Number GP04-06-01, dated July 20, 2004, recommending approval of the General Plan amendment.

Public Comments: Ephraim Lindenbaum spoke in opposition and expressed concerns regarding community meetings and overgrowth of proposed property.

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and unanimously carried, Staff recommendation *request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Low Density Residential for property located on the west side of Peregrino Way* was tentatively approved. (10-0-1). Absent: Gonzales.

12.6 Continuance of this September 7 General Plan hearing and adoption of a resolution approving General Plan amendment actions on September 7 and September 21 to September 21, 2004. (Planning, Building and Code Enforcement)

Action: The General Plan was continued to September 21, 2004.

OPEN FORUM

- 1) Eric Peterson expressed his concerns on City-planned developments in residential neighborhoods.
- 2) Donna Wallach expressed opposition to tax dollars being spend on hosting the Central Coast Gang Investigators Gang Conference (CCGI) conference in San José.
- 3) Jesse Villareal spoke on issues regarding police brutality and against the (CCGI) conference recently held in San José.
- 4) Raj Jayadev also spoke about the (CCGI) conference and urged the Council to conduct an investigation of their activities. .

ADJOURNMENT

The Council of the City of San José was adjourned at 8:57 p.m.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, C.M.C, CITY CLERK

EW/9-7-04